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96-060

No. 95-799

Supreme Court, U.S.
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CLERK

In The
Supreme Court of the United States
October Term, 1995

ELIJAH W. RATCLIFF
Petitioner,

vs.

THE STATE BAR OF TEXAS
Respondent.

On Petition for Writ of Mandamus
To The
Supreme Court of Texas

BRIEF OF RESPONDENT

Respectfully submitted,

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STATEMENT OF THE CASE

Petitioner, Elijah W. Ratcliff, initially brought suit in the District Court of Travis County, Texas against the Texas Employment Commission seeking to set aside employment taxes. During the course of the proceedings, Ratcliff amended his suit to add several other defendants including the State Bar of Texas and Karen Johnson, Executive Director of the State Bar of Texas. The allegations against the State Bar and Mrs. Johnson were vague and unspecified but appeared to stem from Ratcliff's disbarment from the practice of law on February 28, 1974.

The trial court granted a plea to the jurisdiction on behalf of the State Bar of Texas and Karen Johnson and dismissed Ratcliff's Third Amended Petition with prejudice.

Ratcliff appealed the Order to the Court of Appeals for the Third District of Texas. On October 11, 1995, the Court of Appeals affirmed the trial court's judgment. The opinion of the court of appeals correctly states the nature and result of the suit.

Ratcliff filed an application for writ of error with the Texas Supreme Court on November 29, 1995 and such application was denied by the Supreme Court of Texas on December 22, 1996. (Case No. 95-1232).

Ratcliff now seeks a writ of mandamus against a state district judge to set aside the Order granting the plea to the jurisdiction. This response is filed on behalf of the State Bar of Texas and Karen Johnson.

STATEMENT OF THE FACTS

Petitioner, Elijah W. Ratcliff, initially brought this action in the District Court of Travis County, Texas against the Texas Employment Commission seeking to set aside employment taxes. Ratcliff amended his petition to include the State Bar of Texas as a defendant. The Suit sought monetary damages and equitable relief against the State Bar for unspecified acts against Ratcliff.

The State Bar of Texas filed special exceptions to the First Amended Petition excepting to the petition on the basis that 1) it alleged that the State Bar of Texas was an agency of the State of Texas; 2) for failing to state a cause of action and failing to give fair notice of what it must defend; 3) for failing to specify the allegations of activities and

misconduct; 4) for failing to establish standing to sue the State Bar; and 5) for failing to specify the amount of damages sought.

After a hearing, the trial court granted the State Bar's special exceptions and ordered Ratcliff to amend his petition. Ratcliff filed a Second Amended Petition but failed to correct the defects set forth in the State Bar's special exceptions. Instead, Ratcliff recounts a litany of perceived injustices associated with a criminal conviction obtained against him, with his disbarment from the practice of law in 1974, and his inability to obtain reinstatement over the last twenty (20) years.

Consequently, the State Bar filed special exceptions to the second amended petition. After a hearing, the trial court granted the Bar's special

exceptions and Ratcliff was specifically ordered to amend particular portions of the petition within thirty (30) days of the hearing.

Between the date of the hearing and the signing of the Order by the trial court, Ratcliff amended his petition again and added as a defendant Karen Johnson, the Executive Director of the State Bar of Texas. No significant changes were made to this latest pleading nor were any changes made to the portions of the petition specifically ordered by the trial court to be amended.

Thereafter, the State Bar of Texas and Karen Johnson filed a Plea to the Jurisdiction. After a hearing, the plea to the jurisdiction was granted and Ratcliff's Third Amended Original Petition was dismissed with prejudice. The trial court also noted

that Ratcliff had failed to follow the Court's order pertaining to the State Bar's special exceptions. Because there was some confusion as to the finality of this Order, the State Bar sought clarification and a subsequent Order dismissing Ratcliff's claims was entered.

OBJECTION TO JURISDICTION

Petitioner, Ratcliff asserts jurisdiction of this Court pursuant to 28 U.S.C. §1651(a), i.e., by writ of mandamus. However, Ratcliff has failed to establish jurisdiction pursuant to Rule 20.1 of the Rules of Supreme Court of the United States. No cases are pending in any federal court and thus this writ is not in aid of the Court's appellate jurisdiction. Rather, Ratcliff seeks a collateral attack upon a final state judgment. Therefore, the petition

should be denied for lack of jurisdiction.

ARGUMENT

The Supreme Court lacks jurisdiction to issue a writ of mandamus.

Ratcliff continues in his attempt to collaterally attack his state court judgment of his 1974 disbarment. Federal courts do not have subject matter jurisdiction over these types of challenges. *Musslewhite v. State Bar of Texas*, 32 F.3d 942, 945 (5th Cir. 1994); *Liedtke v. State Bar of Texas*, 18 F.3d 315 (5th Cir. 1994).

In addition, Supreme Court jurisdiction is justified to control state court action by using extraordinary writs **only when the litigation is prospectively within the Court's appellate jurisdiction.** See *United States v. Harper*, 729 F.2d

1216, 1221 (9th Cir. 1984); *Gulfstream Aerospace Corp. V. Mayacamas Corp.*, 108 S.Ct.1133 (1988). *16 Wright, Miller, Cooper & Gressman, Federal Practice and Procedure: Jurisdiction §4018 (1977).*

This requires the existence of a federal question. *Id.* Otherwise, extraordinary writs could be used to circumvent the policies that underlie the independent and adequate state ground doctrine. *Id.*

Petitioner, Elijah W. Ratcliff's original action against the Texas Employment Commission seeking to set aside employment taxes was amended to include the State Bar of Texas as a defendant. Petitioner has made three failed attempts to amend his petition by specifying how or why his 1974 disbarment from the practice of law relates to the original action. Despite this, Petitioner persists in

trying to use his original action to somehow effect his disbarment. Petitioner's continued efforts to negate his disbarment is not a federal question.

Petitioner does not present any arguments that Texas substantive law is insufficient to resolve questions of attorney licensing. (Pet. Br. at 1-2). At best, petitioner argues that the state court's decisions are erroneous given Texas law. *Id.* Nevertheless, with respect to attorney licensing issues in the State of Texas, the Texas Supreme Court is the best determiner of the merits of Petitioner's complaint against the State Bar of Texas.

The doctrine of independent and adequate state ground requires that they be allowed to do so. "So, too, it would fly in the face of the policies that underlie the independent and adequate state law

doctrine to use extraordinary writs as a method of seizing federal questions out of incomplete litigation that might ultimately be resolved independently on adequate state grounds." *16 Wright, Miller, Cooper & Gressman, Federal Practice and Procedure: Jurisdiction § 4018.*

PRAYER

WHEREFORE, PREMISES, ARGUMENTS AND AUTHORITIES CONSIDERED, Respondent prays that Petitioner's Petition for Writ of Mandamus be denied and for such other and further relief as this Court may deem proper.

Respectfully submitted,

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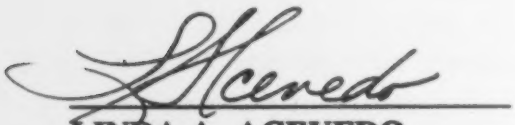

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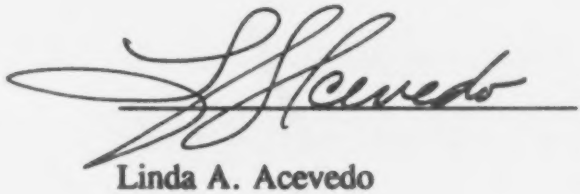
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Brief of Respondent has been served on Elijah W. Ratcliff, pro se, P.O. Box 862, Livingston, Texas 77351, and on all other parties through their attorney of record, Susan F. Eley, P.O. Box 12548, Austin, Texas 78711-2548, by delivery of true and correct copies to them by certified mail, return receipt requested, by depositing the same, enclosed in a postpaid, properly addressed wrapper in an oficial depository under the care and custody of the United States Postal Service on the 8th day of August, 1996.



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